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Patent Docket P0978-1C1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Avi J. Ashkenazi Serial No.: 09/459,808 Filed: December 13, 1999 For: Apo-2 Ligand	Group Art Unit: 1647 Examiner: D. Romeo CERTIFICATE OF MAILING I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231 on: February 5, 2002 <i>Mona Beltran</i> Mona Beltran
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Response to Communication

Assistant Commissioner of Patents
Washington, D.C. 20231

SIR:

This paper is being filed in connection with the Office Communication mailed December 31, 2001, regarding the restriction requirement issued by the Examiner. The Examiner has required that Applicant elect a single disclosed species, under 35 USC 121, of chemotherapeutic agent as recited in pending claim 44.

Applicant respectfully disagrees that the instant species election is proper with regard to the pending claims. Claims drawn to therapy using Apo-2 ligand and chemotherapy were similarly presented in Applicant's parent application (Serial No. 08/584,031 to which priority is claimed under Section 120), and no such species election was ever raised during its prosecution. Application Serial No. 08/584,031 has now issued as a patent. Accordingly, withdrawal of this election requirement is requested. In the event this election is not withdrawn, the species relating to 5-Fluorouracil is elected.

Respectfully submitted,
GENENTECH, INC.

Date: February 5, 2002

By:

Diane L. Marschang

Diane L. Marschang

Reg. No. 35,600

Telephone No. (650) 225-5416



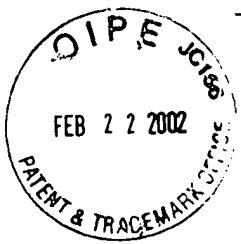
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1647#

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TRANSMITTAL LETTER

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Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

Transmitted herewith are the following documents:

1. Petition and Fee for One Month Extension of Time (37 CFR 1.136(a))
2. Response to Communication

In the event any additional fees are due in connection with the filing of these documents, the Commissioner is authorized to charge such fees to our Deposit Account No. 07-0630.

Respectfully submitted,

GENENTECH, INC.

Date: February 5, 2002

By: *Diane L. Marschang*
Diane L. Marschang
Reg. No. 35,600
Telephone No. (650) 225-5416



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